



## FOR COUNTY USE ONLY

County of San Bernardino

F A S

## STANDARD CONTRACT

X	New	Vendor Code		SC	Dept.	A	Contract Number	
	Change	GENERAL628						
	Cancel							
County Department					Dept.	Orgn.	Contractor's License No.	
Purchasing								
County Department Contract Representative					Telephone		Total Contract Amount	
Allen Sanchez					(909) 387-2065		0	
Contract Type								
<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:								
If not encumbered or revenue contract type, provide reason:								
Commodity Code			Contract Start Date	Contract End Date	Original Amount		Amendment Amount	
			8/1/03	7/31/06				
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.		Amount	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.		Amount	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.		Amount	
Project Name				Estimated Payment Total by Fiscal Year				
Auctioneer Services				FY	Amount	I/D	FY	Amount
Contract Type - 2(b)								

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and

Name

General Auction Company

Hereinafter called Vendor

Address

7015 Knott Ave

Buena Park, CA 90620

Telephone

(714) 670-8510

Federal ID No. or Social Security No.

## IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

This Agreement is entered into as of the 1<sup>st</sup> day of August 2003 between **General Auction Company** (hereinafter referred to as Vendor) and the County of San Bernardino (hereinafter referred to as County).

## RECITALS

**WHEREAS**, the County of San Bernardino desires to designate vendor of choice to provide **auctioneering services** to all County departments, AND

**WHEREAS**, the County conducted a competitive process to find vendors able to provide the necessary services, AND

**WHEREAS**, **General Auction Company** has been evaluated by a committee consisting of user departments and by the County Purchasing Department (hereinafter referred to as Purchasing) determined to have the necessary skills to provide services under the terms and conditions provided herein,

**NOW, THEREFORE**, the County designates **General Auction Company** as the vendor of choice to provide **auctioneering services** as follows:

## RESPONSIBILITIES AND DUTIES OF THE COUNTY

- A. County shall provide in a timely manner the free and clear Title or Certificate of Ownership and all other documents necessary to affect Transfer of Title for motor vehicles, trailers, and vehicle equipment and other property. At the option of the Vendor, vehicles may not be offered at auction unless the Certificate of Ownership and all other documents necessary to affect a Transfer of Title for motor vehicles, trailers, and vehicle equipment are submitted at least five (5) days prior to the sale.
- B. Submit to Vendor a list of Property released for sale. It is understood that minor changes in said list may be submitted to Vendor at any time prior to two (2) weeks in advance of the auction. Notwithstanding the foregoing, the County may withdraw property from said list upon notice to Vendor five (5) days prior to auction.
- C. Maintain any records considered necessary by the County other than those provided by the Vendor. County will also provide Vendor such additional documents as Vendor may reasonably request in order to assist Vendor in performing its duties under the agreement. Vendor will provide County such documents as County may request to protect County's rights under the consignment provisions of the Uniform Commercial Code and such other sales-related documentation not included in the reports otherwise provided County.
- D. County warrants title to all property to be unencumbered at the time of sale. All property shall be sold "as is, where is" without any warranty by County or Vendor as to condition or usability. This disclaimer shall be obtained in all auction brochures and incorporated into the "Terms and Conditions of Sale" as well as on the sale invoice.

## AUCTION REQUIREMENTS

- A. All auctions will be open to the general public, and there shall be no fee charged for participation as a potential buyer.
- B. Sales of such property will be made only to the highest responsible bidder. The proceeds from all sales shall be collected in the form of cash, cashier's check, traveler's check, money order, or a check guaranteed by a bank letter of credit.
- C. Unless otherwise directed by the County, all unsold property shall be rescheduled to the next available auction at no additional cost to the County.
- D. Receive and protect all property consigned for disposal.
- E. Physically arrange property prior to auction date.
- F. Supply all needed personnel and set up all needed auction equipment and facilities such as offices, customer seating, and auction stands.
- G. Comply with all pertinent provisions of the Bulk Sales Laws and laws and regulations of the State of California, including, but not necessarily limited to, obtaining all necessary licenses and permits, posting required bonds, payment of all fees and expenses thereof and publicizing the sale.
- H. Auctioneer shall engage in a comprehensive advertising and marketing campaign in advance of each auction. Said campaigns shall include: advertisements in major newspapers in the surrounding major metropolitan areas, preparing, printing, and distributing fliers and brochures on special interest property, advertisements in trade journals as well as national and international campaigns when appropriate.
- I. The County encourages distribution by first class mail auction brochures to Auctioneer's current mailing list prior to each auction. Said brochures will contain descriptions and photographs of featured items of the property to be auctioned on the advertised auction date. A reasonable quantity of these brochures can be provided to the County upon request.

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- J. Register all bidders and issue bidder numbers.
- K. Prepare and present to the new owner the necessary documentation to transfer ownership or title, including Department of Motor Vehicle (DMV) forms.
- L. Provide a detailed summary statement "Final Auction Results" to the County accompanied by payment of those gross proceeds of sale to County no later than ten (10) working days after auction date. Final accounting will include sale price name and address of purchaser. Summary statements may be designed to fit consignor requirements.
- M. Vendor shall ensure that all property is available for public inspection at least two (2) working days immediately preceding the auction sale date. No other public access will be allowed. Vendor's personnel and security employees will supervise this inspection period. Vehicles are washed prior to inspection days and again immediately before the auction sale. As requested by County, Vendor shall provide detail service for the property prior to auction.
- N. As requested by County, Vendor shall arrange for the transportation of all property from the County's possession to Vendor's auction facility. Licensed and insured subcontractors shall provide such transportation. The fees for such services shall be deducted from the auction proceeds.
- O. As requested by County and in compliance with California State laws, Vendor shall arrange for smog certificate or statement that vehicle does not meet smog requirements prior to sale. The fees for such services shall be deducted from auction proceeds.
- P. When requested by County, Vendor shall arrange for property repair or reconditioning. Vendor, upon direction of the County, will obtain price quotes, and upon receipt of written instructions from the County, shall have the necessary services performed. The fees for such services shall be deducted from auction proceeds.
- Q. The County reserves the right to set a minimum selling price on certain items.
- R. Auctioneer shall videotape auctions and provide the County with a copy of the video upon request.
- S. Vendor may be required to provide documentation that County employees, who successfully bid on property that was previously owned by the County, have duly notified the person conducting the auction or sale of their County employment status before taking possession of such property.

## **GENERAL AGREEMENT TERMS**

### Taxes

County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Vendor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Agreement.

### Representation of the County

In the performance of the Agreement, Vendor, its agents and employees, shall act in an independent capacity and not as officer, employees, or agents of the County of San Bernardino.

### Vendor Primary Contact

The Vendor will designate an individual to serve as the primary point of contact for the Agreement. Vendor or designee must respond to County inquiries within two (2) business days. Vendor shall not change the primary contact without written acknowledgement to the County.

### Change of Address

Vendor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

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#### Subcontracting

Vendor agrees not to enter into any subcontracts for work contemplated under the Agreement without first obtaining written approval from the County. Any subcontractor shall be subject to the same terms and conditions as Vendor. Vendor shall be fully responsible for the performance and payments of any subcontractor's contract.

#### Agreement Assignability

Without the prior written consent of the County, the Agreement is not assignable by Vendor either in whole or in part.

#### Agreement Amendments

Vendor agrees any alterations, variations, modifications, or waivers of the provisions of the Agreement shall be valid only when reduced to writing, executed and attached to the original Agreement and approved by the required persons.

#### Termination for Convenience

The County for its convenience may terminate the Agreement in whole or in part upon thirty (30) calendar day's written notice. Payment will be made to the Vendor for services rendered and expenses incurred prior to the effective date of termination. Upon receipt of a termination notice, Vendor shall promptly discontinue services unless the notice directs otherwise. Vendor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

#### Attorney Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under INDEMNIFICATION AND INSURANCE REQUIREMENTS.

#### Venue

The venue of any action or claim brought by any party to the Agreement will be the Central District Court of San Bernardino County. Each party hereby waives any law or rule of the court which would allow them to request or demand a change of venue. If any action or claim concerning the Agreement is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to San Bernardino County.

#### Jury Trial Waiver

Vendor and County hereby waive their respective rights to trial by jury for any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding, and/or hearing brought by either Vendor against County or County against Vendor on any matter arising out of, or in any way connected with, this Agreement, the relationship of Vendor and County, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

#### Licenses and Permits

Vendor shall ensure that it has all necessary licenses and permits required by Federal, State, County and municipal laws, ordinances, rules and regulations. The Vendor shall maintain these licenses and permits in effect for the duration of the Agreement. Vendor will notify County immediately of loss or suspension of any such licenses and permits. Failure to maintain a required license or permit may result in immediate termination of the Agreement.

#### Labor Laws

Vendor shall strictly adhere to the applicable provisions of the Labor Code regarding the employment of apprentices; minimum wages; travel and subsistence pay; retention and inspection of payroll records; Workers' Compensation; payment of wages. If applicable, the Vendor shall forfeit to the County the penalties prescribed in the Labor Code for violations.

#### Notification Regarding Performance

In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under the Agreement, the Vendor shall notify the County within one (1) working day, in writing and by telephone.

#### Conflict of Interest

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Vendor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Agreement or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Agreement or shall have any relationship to the Vendor or officer or employee of the Vendor.

#### Improper Consideration

Vendor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding the Agreement.

The County, by written notice, may immediately terminate any Agreement if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once an Agreement has been awarded.

Vendor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Vendor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

#### Inaccuracies or Misrepresentations

If in the course of the RFP process or in the administration of a resulting Agreement, the County determines that Vendor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, the Vendor may be terminated from the RFP process or in the event an Agreement has been awarded, the Agreement may be immediately terminated.

In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

#### Employment of Former County Officials

Vendor agrees to provide or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Vendor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Vendor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

#### Recycled Paper Products

The County has adopted a recycled product purchasing standards policy (11-10), which requires Vendors to use recycled paper for proposals and for any printed or photocopied material created as a result of a contract with the County. The policy also requires Vendors to use both sides of paper sheets for reports submitted to the County whenever practicable

#### Artwork, Proofs and/or Negatives

All artwork, proofs and/or negatives in either print or digital format for this product are the property of the County of San Bernardino. These items must be returned to the County of San Bernardino within ten (10) days, upon written notification to the Vendor. In the event of a failure to return the documents, the County is entitled to pursue any available legal remedies. In addition, the Vendor will be barred from all future solicitations, for a period of at least six (6) months.

#### Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Vendor pursuant to the Agreement shall be considered property of the County upon payment for services. All such items shall be delivered to County at the completion of work under the Agreement, subject to the requirements of Section III -Termination for Convenience. Unless otherwise directed by County, Vendor may retain copies of such items.

#### Release of Information

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Input Date	Keyed By

No news releases, advertisements, public announcements or photographs arising out of the Agreement or Vendor's relationship with County may be made or used without prior written approval of the County.

## INDEMNIFICATION

1. Vendor shall defend, indemnify and hold County, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorney fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Vendor, its officers, employees, and agents.
2. County shall defend, indemnify and hold Vendor, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent acts or omissions of County, its officers, employees, and agents.
3. In the event that Vendor or County is found to be comparatively at fault for any claim, action, loss or damage, which results from their respective obligations under this Agreement, the Vendor and/or County shall indemnify the other to the extent of its comparative fault.
4. Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release either party from its indemnification obligations hereunder as to any claim or cause of action asserted so long as the event upon which such claim of action is predicted shall have occurred prior to the effective date of any such termination or completion.

## INSURANCE

Without in any way affecting the indemnity herein provided and in addition thereto the Vendor shall secure and maintain throughout this Agreement the following types of insurance with limits as shown:

1. **Workers' Compensation** – A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount or form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the Vendor and all risks to such persons under this Agreement.
2. **Comprehensive General and Automobile Liability Insurance** – This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than \$1,000,000.
3. **Errors and Omissions Liability Insurance** – Combined single limits of \$1,000,000 for bodily injury and property damage and \$3,000,000 in the aggregate or
4. **Professional Liability** – Professional liability insurance with limits of at least \$1,000,000 per claim or occurrence.
5. **Additional Named Insured** – All policies, except for Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder.
6. **Waiver of Subrogation Rights** – Except for the Errors and Omissions Liability and Professional Liability, Vendor shall require the carriers of the above-required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors.
7. **Policies Primary and Non-Contributory** – All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

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Input Date	Keyed By

8. **Proof of Coverage** – Vendor shall immediately furnish certificates of insurance to the County Department administering the Agreement evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expired without thirty (30) days written notice to the Department, and Vendor shall maintain such insurance from the time Vendor commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this Agreement, the Vendor shall furnish certified copies of the policies and all endorsements.
9. **Insurance Review** – The above insurance requirements are subject to periodic review by the County. The County's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurances is not available, is unreasonably priced, or is not needed to protect the interest of the County. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonable priced available, the Risk Manager is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any such reduction or waiver for the entire term of the Agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Vendor agrees to execute any such amendment within thirty (30) days of receipt.

#### **STATUS OF PARTIES**

1. The parties hereby expressly understand and agree that this Agreement is not intended and shall not be construed to create a relationship of agent, servant, employee, partnership, joint venture, or association between Vendor and County but is rather an Agreement by and between independent contractors.
2. The parties hereby expressly understand and agree that their employees, agents, and independent contractors are not the employees or agents of the other party for any purpose, including, but not limited to, compensation for services, employee welfare and pension benefits, other fringe benefits of employment, or workers' compensation insurance.

#### **MODIFICATION**

No modification, amendment, supplement to, or waiver of any provision of this Agreement shall be binding upon the parties unless made in writing and duly signed by all parties.

#### **SEVERABILITY**

The provisions of this Agreement are specifically made severable. If any clause, provision, right and/or remedy provided herein are unenforceable or inoperative, the remainder of this Agreement shall be enforced as if such clause, provision, right and/or remedy were not contained herein.

#### **ALTERNATIVE DISPUTE RESOLUTION**

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

#### **TERM AND TERMINATION**

This Agreement shall be effective August 1, 2003 through July 31, 2006. However, this Agreement may be terminated, with or without cause, by either party after giving the other party thirty (30) days advance written notice of its intention to terminate. The Purchasing Department is authorized to initiate the termination on behalf of the County.

#### **NOTICES**

All written notices provided for in this Agreement or which either party desires to give to the other shall be deemed fully given, when made in writing and personally delivered to the other party or deposited in the United States mail, certified with return receipt requested and postage prepaid, and addressed to the other party as follows:

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County of San Bernardino  
Purchasing Department  
Attn: Allen Sanchez, Contracts Analyst  
777 East Rialto Avenue  
San Bernardino, CA 92415-0760

General Auction Company  
7015 Knott Ave.  
Buena Park, CA 90620  
Attn: Gene Govoreau

#### ENTIRE AGREEMENT

This Agreement contains the final, complete and exclusive Agreement between the parties hereto. Any prior Agreement promises, negotiations or representations relating to the subject matter of this Agreement not expressly set forth herein are of no force or effect. This Agreement is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Agreement and signs the same of its own free will.

**Any and all terms and conditions contained in the Agreement shall supercede any conflicting terms and conditions contained in any documents, Purchase Orders, Bills of Lading or similar documents.**

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COUNTY OF SAN BERNARDINO

General Auction Company

(Print or type name of corporation, company, contractor, etc.)

► \_\_\_\_\_  
Dennis Hansberger, Chairman, Board of Supervisors

By: ► \_\_\_\_\_  
(Authorized signature - sign in blue ink)

Dated: \_\_\_\_\_

Name: James L. Stewart  
(Print or type name of person signing contract)

SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

Clerk of the Board of Supervisors  
of the County of San Bernardino.

Title: President  
(Print or Type)

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Deputy

Address: 7015 Knott Ave  
Buena Park, CA 90620

Approved as to Legal Form

Reviewed by Contract Compliance

Presented to BOS for Signature

► \_\_\_\_\_

► \_\_\_\_\_

► \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

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**PRICING –AUCTIONEER SERVICES**

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Cost of services**A. Cars, Vans, and light duty trucks (up to one ton).**

Commission percentage 0%.

**B. Real Property and mobile homes (including appraisal, advertising, marketing, sale, and accounting).**

Commission percentage 0%.

**C. Transportation.**

Proposed dollar amount \$0.00.

**D. Vehicle Storage.**

Proposed dollar amount \$0.00.

**E. Personal Property Storage.**

Proposed dollar amount \$0.00.

**F. Detail Services prior to auction. Includes buff, wax, exterior, interior shampoo, engine steam clean, and emblem removal.**

Proposed dollar amount \$0.00.

**G. Smog check.**

Proposed dollar amount \$0.00.

**H. Safety inspection.**

Proposed dollar amount \$0.00.